

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13672, of Donald L. Witz and Yoo K. Kim, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot occupancy requirements (Sub-section 3303.1) for a proposed rear addition to a row dwelling in an R-4 District at the premises 302 - 10th Street, S.E., (Square 970, Lot 15).

HEARING DATE: February 10, 1982  
DECISION DATE: March 3, 1982

FINDINGS OF FACT:

1. The subject property is located on the east side of Tenth Street, S.E., between C Street and South Carolina Avenue, S.E. The property is located in an R-4 District and is described as premises 302 Tenth Street, S.E.

2. The site is improved with a dwelling which was constructed prior to 1900. It has two stories and is occupied as a single family residence. The site is rectangular in shape and is flat.

3. The site is a non-conforming lot in that it is 1,280 square feet in area and sixteen feet wide rather than 1800 square feet in area and eighteen feet wide as prescribed by the Zoning Regulations for R-4 Districts.

4. The dwelling presently occupies 768 square feet or exactly sixty percent of the site.

5. The applicants seek approval of the construction of a second story rear porch which would extend for the full width of the existing structure and eleven feet into the existing rear yard. The proposed addition will increase the lot occupancy of the subject premises by 176 square feet and will exceed the lot occupancy limitations. With the new addition, the applicants seek a 176 square foot variance or twenty-three percent from the lot occupancy requirements.

6. The lot will have a rear yard of twenty-one feet after the construction of the proposed addition.

7. The proposed addition will be constructed over an area presently occupied by a wisteria arbor which will be reinforced and reconstructed to provide the foundation for the floor of the second story porch.

8. There is no visible evidence that a rear second story porch ever existed at this structure. There is evidence of second story porches existing on three other dwellings in the same line of houses on 10th Street, S.E. namely, 310, 312 and 314 10th Street, S.E., dwellings located to the south of the subject property. There is also evidence that of the forty-two dwellings in the square in which the subject property is located, fifteen have second story rear porches and twenty have second story rear porches and/or carriage houses resulting in lot occupancy in excess of the limitations in an R-4 District. The adjacent structure to the immediate north of the subject property is a residence which occupies 100 percent of the lot on which it is constructed and which creates a solid brick party wall on the entire northern property line of the applicants' rear yard.

9. The applicants testified that a second-story rear porch would enable them to have access to air and ventilation which is affected by the structure to the immediate north of the subject site and the two story structure to the immediate east of the subject site which is separated from applicants' property only by a narrow pedestrian alley and that the proposed addition would enable them to enjoy their back yard while at the same time affording them protection from the elements. The applicants further testified that they had lived in the subject dwelling since 1964, and have repeatedly tried numerous temporary measures, such as canvas awnings, beach umbrellas and arbors, all of which proved to be unsatisfactory, to achieve the effect a permanent second story porch will provide.

10. The applicants also testified that since the dwelling on the subject site is constructed in an east-west direction with the front of the dwelling facing west and the rear yard facing east, the light in the yard of the neighbor to the immediate south would not be affected by the proposed addition, nor, because of the design of the proposed addition, would that neighbor's air and ventilation be blocked.

11. The applicant submitted to the record a petition of some seventy-five signatures of neighbors in support of the application. The petition, which was circulated in August, 1981, stated:

"I have reviewed the plans for the rear porch addition to the house owned by Don Witz at 302 Tenth Street, S.E. Lot 15, Square 970, and I have no objections to the proposed addition or to the request for any zoning variance which might be necessary to permit construction of the rear porch in conformity with District of Columbia laws and regulations."

Every neighbor in Square 970 at the time the petition was circulated signed the petition with the exception of the neighbor to the immediate south of the subject property.

12. There was opposition to the application by the property owner directly south of the subject site on the grounds that the proposed addition was not an aesthetic improvement to the neighborhood and could lessen the value of his property. The neighbor argued that the addition would reduce the view from the second floor rear window of his house, and that the addition would "box in" his property, in loss of light, air and ventilation. The neighbor argued that granting the variance may lead to a future enclosure of the addition with the ability to create an apartment. The neighbor questioned the construction of the porch, since there was no building permit. The neighbor argued that the applicant had offered no proof of a practical difficulty inherent in the land to support the variance.

13. As to the arguments raised by the neighbor, the Board finds the last grounds, for reasons discussed below, the lack of a practical difficulty, to be the most meritorious. As to the others, aesthetics is a subjective matter; the loss of property value is hypothetical; the opposition has no scenic easement; the Board is not the proper forum for faulty and illegal construction. The opposition's evidence as to loss of light, air and ventilation was conclusionary and not based on probative evidence.

14. The Capitol Hill Restoration Society by letter of February 8, 1982, reported that the Society, by unanimous vote of its Board of Directors on Wednesday, February 3, 1982, opposed this variance request. Neither hardship nor exceptional practical difficulties are posed by this application. Many single family residences on Capitol Hill are similar to this property, and many have small back yards, yet they are enjoyed by their owners or inhabitants, and they are fully marketable. This house is well suited for residential use within the existing Zoning Regulations, without a variance. In addition, the proposed porch would interfere with the light and air for the adjoining property at 304 10th Street, S.E., resulting in a structure that would both block some of the view out of the back window and loom over the similarly small back yard. Not only is there no hardship, this is precisely the type of situation in which the Zoning Regulations are intended to protect adjoining landowners. The Board concurs with the CHRS as to its first basis, a lack of a practical difficulty. As to the second grounds less than a scintilla of evidence was introduced into the record.

15. Advisory Neighborhood Commission 6B, by letter of February 11, 1982, voted to oppose the application. No grounds were stated. The Board is required by statute to give great weight to the issues and concerns of the ANC as reduced to writing in a recommendation. The Board finds that in the subject instance, there is nothing to address.

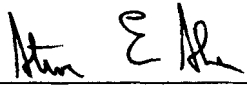
16. The applicants testified at the public hearing that they were willing to compromise and construct only a one story rear porch, a compromise previously suggested by the opposing neighbor. The opposing neighbor testified at the hearing that the compromise was no longer acceptable to him and that he would oppose any addition.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicants are seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owners arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape, topographical conditions. The Board further under Paragraph 8207.11 must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that the practical difficulty does not exist. The site is flat and rectangular in shape. The lot is not unique in the subject area in its non-conformance as to area and width area lot occupancy. The relief the applicants seeks is based on comfort and inconvenience. These are personal difficulties not practical difficulties arising out of the property. Personal grounds are not the basis to grant an area variance. They will not support so large a variance. The Board therefore ORDERS that the application is DENIED.

VOTE: 4-1 (Douglas J. Patton, Connie Fortune, William F. McIntosh and Charles R. Norris to DENY; Walter B. Lewis OPPOSED).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 

STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER JUL - 6 1982

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UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."